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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,132	06/30/2006	Daniel Steiger	EIS.009	1155
48234 7590 05/26/2010 MEREK, BLACKMON & VOORHEES, LLC 673 S. WASHINGTON ST ALEXANDRIA, VA 22314				
EXAMINER WILLIAMS, LEA				
ART UNIT		PAPER NUMBER		
1787				
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05/26/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/585,132

Applicant(s)

STEIGER ET AL.

Examiner

LELA S. WILLIAMS

Art Unit

1787

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Applicant's arguments filed February 16, 2010 have been fully considered. The amendment necessitated the new grounds of rejections set for the below and therefore, the following action is final.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick et al. GB 2,035,035 in view of Le Gloahec U.S. Pat. No. 2,400,834.**

Fitzpatrick discloses the production of a high fat instantised milk powder (page 1, line 57) comprising free fat (page 1, line 100), where lecithin is combined with water and sprayed onto the milk powder particles (page 1, lines 65-75), the particles agglomerate and are dried (page 1, line 60); the reference is silent on the use of alginate. Le Gloahec discloses that the use of an alginous material in dairy products, i.e., milk products or products containing milk (page 4, col. 1, line 55) has proven to be advantageous because it will maintain the particle or granules in suspension absorbed on or with the alginate (page 1, col. 2, line 5). Le Gloahec discloses dissolving algin in water (page 2, col. 2, line 37) to obtain an algin comprised solution in either dry or liquid form (page 2, col. 2, lines 71-74) and applying the solution to the dairy product. Although the reference does not detail spraying the algin solution onto the particles and further drying the particles, it is disclosed that the algin solution is used to prepare milk powder or ice cream powder (page 4, col. 2, line 10); meaning the particle powders, which inherently comprise "free surface fat", will come into contact with the algin solution, become wet by said solution,

wet powders will characteristically agglomerate, then the powder particles are dried. Given that Le Gloahec states the advantages of using alginous materials with dairy products, products which include powdered milk, because the alginous material will act in the form of a particle coating, as it is meant to act in the present invention, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply the algin in the same manner as disclosed by Fitzpatrick, i.e. by spraying and also combine the teachings of the references to obtain a method which will produce an instant powder with good wettability which will dissolve within the shortest time.

Allowable Subject Matter

4. Claims 4 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Given that neither Fitzpatrick nor Le Gloahec disclose the free surface fat as coconut milk powder, claims 4 and 5 would be allowable if rewritten in independent form as described above.

Response to Amendment

5. Claims 1, 2, 4, and 5 are currently pending. Claim 3 has been cancelled.

6. Applicant's amendment to claims 1-3 filed February 16, 2010 is sufficient to overcome the 35 USC § 112, second paragraph rejection of the previous office action. Therefore the rejection has been withdrawn.

Response to Arguments

7. Applicant's arguments filed February 16, 2010 have been fully considered but they are not persuasive. Applicant's argument of "the use of alginates in instantization was not known

prior to the present invention.” (Page 4, ¶ 1) is noted; however not persuasive. Le Gloahec teaches using alginate in making instant powders by adding the alginate composition to the mild product and dehydrating said mixture, which becomes an instant powder. Applicant’s statement of the coagulation of alginate in liquid, as addressed by Le Gloahec, is correct, however the reference remedies that by providing a compound “that is soluble in water and that is chemically non-reactive with dissolved calcium salts” (Le Gloahec, page 1, col.1, lines 12-16). Therefore, it is the Examiner’s position that the use of alginates to form instant powders was known in the art prior to the present application and Le Gloahec discloses a remedy to coagulation problems which occur with alginates in liquid.

Applicant’s mention to page 4, column 2, line 10 of Le Gloahec, which were pointed to in the previous office action, and “dehydration appears to be a step that occurs after alginate is mixed with the liquid dairy product” (page 4, ¶ 2) is noted; however applicant’s attention is first drawn to Le Gloahec’s disclosure of adding the alginate compound to “dairy products or the like” and “of any milk product or other product” (Le Gloahec, page 4, col.1, lines 32-35 & col. 2, lines 12-20). It is the Examiner’s position that “or the like” and “any milk product or other product” would not only encompass liquid dairy product, but also dry dairy products, i.e., powdered milk, which would result in the alginate compound being mixed with a dry dairy product, thus disclosing the use of alginate on food powders. Secondly, page 4, column 2, line 10 of Le Gloahec shows that alginate is used in a method for producing instant powders.

Therefore, given Le Gloahec’s disclosure of the use of alginate on dairy products, it would have been obvious to one of ordinary skill in the art to incorporate Le Gloahec into the

instant milk powder of Fitzpatrick to obtain a stable product with the desired viscosity (Le Gloahec, page 4, col.1, lines 25-30).

Applicant's argument that it would have not been obvious for one of ordinary skill to use lecithin and alginate in the same step is not persuasive. Given Fitzpatrick's disclosure of lecithin being sprayed onto the powder to improve the reconstitution properties (page 1 lines 5-35) and Le Gloahec's disclosure of alginate improving the smoothness and texture in milk mixes (page 1, col. 2, lines 5-30), one of ordinary skill would have clearly been motivated to apply both lecithin and alginate to milk powders. Further, given that both the lecithin and alginate are taught to be sprayed onto the powder as an aqueous solution, it would be obvious to one of ordinary skill to apply them both at the same time to alleviate the possibility of the powder becoming saturated with water.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS
Examiner, Art Unit 1787

/L. S. W. /

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787